Supreme Court, U.S.
FILED
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No. 95-567

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LUIS SANTIAGO-MARTINEZ

PETITIONER

vs.

UNITED STATES OF AMERICA

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Bernardo M. Garcia
3030 North Third Street
Suite 955
Phoenix, Arizona 85012
Phone: (602) 274-4880

27pp

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QUESTION PRESENTED

I. WHETHER DISCRIMINATION AGAINST THE HANDICAPPED, AS DEFINED BY THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §12101 *ET SEQ.*, DURING THE JURY SELECTION PROCESS IS SUBJECT TO "HEIGHTENED SCRUTINY" UNDER THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

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No. _____

IN THE

SUPREME COURT

OF THE UNITED STATES

OF AMERICA

October Term, 1995

LUIS SANTIAGO-MARTINEZ

PETITIONER

vs.

UNITED STATES OF AMERICA

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

OPINIONS BELOW

The published written opinion of the Court of Appeals for the Ninth Circuit appears

in Appendix A to this Petition.

JURISDICTION

The Court of Appeals' Judgment in this matter was filed and entered on June 20, 1995 and is set forth in Appendix B. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix C.

STATEMENT OF THE CASE

The United States District Court for the District of Arizona exercised jurisdiction of the underlying matter of this petition. Pursuant to the provisions of 18 U.S.C. § 3231, such exercise of jurisdiction was proper because the charges contained in the Indictment were offenses against the laws of the United States of America.

On June 1, 1994, the trial of Luis

Santiago-Martinez began. After voir dire of the jury, both the Government and Defendant Santiago-Martinez exercised their peremptory strikes. Upon learning of the Government's strikes, Defendant Santiago-Martinez timely objected to the government's use of its peremptory challenges. Defendant Santiago-Martinez challenged the Government's strikes because the government had used such strikes to discriminate against the handicapped, specifically the obese. The trial court denied the Defendant's challenge to the striking of the obese venire persons. Defendant Santiago-Martinez was convicted on felony drug charges.

Defendant Santiago-Martinez appealed to the Ninth Circuit because the trial court allowed the government to discriminate against the handicapped during the jury selection process.[1] On June 20, 1995, the

[1]Defendant Santiago-Martinez argued that Batson v. Kentucky, 476 U.S. 79 (1986) and J.E.B. v. Alabama, 511 U.S. _____, 114 S.Ct.

Ninth Circuit Court of Appeals filed a published opinion rejecting Defendant Santiago-Martinez's claim. Specifically, the Ninth Circuit Court of Appeals stated that recognition of a class for purposes of the Americans With Disabilities Act does not subject the class to heightened scrutiny under the Equal Protection Clause.[2]

1419 (1994) should be extended to subject discrimination against the handicapped during the jury selection process to heightened scrutiny under the Equal Protection Clause.

[2]Courts have included the obese within the class of people defined as handicapped. See Cook v. State of Rhode Island, 10 F.3d 17 (1st Cir. 1993) (Court elevated obese people to a heightened level of protection based on the mandates of the Rehabilitation Act of 1973); Hegwer v. Board of Civil Service Commissioners, 5 Cal. App. 4th 1011, 7 Cal. Rptr. 2d 389 (1992) (Court conceded that obesity caused by the endocrine system could be a handicap); McMillen v. Civil Service Commission, 6 Cal. App. 4th 125, 8 Cal. Rptr. 2d 548 (1992) (Court simply assumed that obesity was a handicap). In the case of Santiago-Martinez, neither the trial court nor the Appellate Court refuted the idea that the obese are handicapped as defined by the Americans with Disabilities Act of 1990.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted in this matter because a question of constitutional law exists which has not been, but should be, settled by this Court. The handicapped, a class of individuals recognized for purposes of the Americans with Disabilities Act of 1990, suffer from discrimination. Various federal and state courts have issued inconsistent opinions regarding the legality of discrimination against the handicapped.[3]

[3] See Eckstein v. Kirby, 452 F.Supp 1235 (E.D. Ark. 1978) (Arkansas statute automatically disqualified people who had hearing or sight impairments from jury service); Rhodes v. State, 27 N.E. 866 (Ind. 1891) (Court held that juror who could not observe facial expressions of witness was not qualified to serve); Black v. Continental Casualty Co., 9 S.W.2d 743 (Tex. Ct. App. 1928) (Court stated that a juror who could not hear or see evidence was per se disqualified from serving on jury duty); Commonwealth v. Susi, 477 N.E.2d 995 (Mass. 1985) (Court held that disqualification of a visually impaired juror should be determined on a case-by-case basis); and Jones v. New York City Transit Auth., 483 N.Y.S.2d 623 (N.Y. Civ. Ct. 1984) (Court should look at particular facts of case to determine whether handicapped person is competent to serve as a juror.)

To ensure uniformity among the lower courts, this Court should grant certiorari and determine whether discrimination against the handicapped is prohibited by the Equal Protection Clause of the United States Constitution.

This Court has addressed the legality of discrimination against various classes of individuals. Specifically, this Court has determined the legality of discrimination based upon race,[4] national origin,[5] alienage,[6] gender,[7] legitimacy,[8] age,[9] and mental

---

[4]See United States v. Carolene Products Co., 304 U.S. 144 (1938).

[5]See Hernandez v. Texas; 347 U.S. 475 (1954).

[6]See Graham v. Richardson, 403 U.S. 365 (1971).

[7]See Craig v. Boren, 429 U.S. 190 (1976).

[8]See Mathews v. Lucas, 427 U.S. 495 (1976).

[9]See Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976).

capacity[10] under the Equal Protection Clause of the United States Constitution. To date, this Court has not ruled whether the handicapped are a protected group under the Equal Protection Clause of the Fourteenth Amendment. This Court should utilize this case to remedy such deficiency in this Court's analysis of the Equal Protection Clause of the United States Constitution.[11]

The handicapped are discriminated against. Unfortunately, unlike the other classes experiencing discrimination, the handicapped lack a Supreme Court declaration regarding whether they shall be afforded heightened judicial scrutiny. The facts of this case present this Court with an

---

[10]See Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985).

[11]Federal lawmakers recognize the discrimination that handicapped individuals experience. They have addressed this discrimination by enacting the Rehabilitation Act of 1973, 29 U.S.C. §701 *et seq.* and the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*

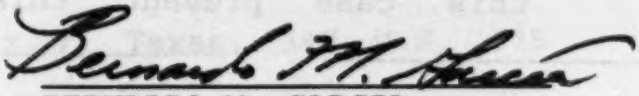
opportunity to provide the handicapped with such an enunciation. Failure to grant certiorari is tantamount to this Court condoning discrimination against the handicapped.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

DATED: September 15, 1995

Respectfully submitted,



BERNARDO M. GARCIA

Attorney for Petitioner

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LUIS SANTIAGO-MARTINEZ,
Defendant-Appellant.

No. 94-10350

D.C. No.
CR-93-00189-PGR

OPINION

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Submitted June 12, 1995*
San Francisco, California

Filed June 20, 1995

Before: Alfred T. Goodwin, Jerome Farris,
and Andrew J. Kleinfeld, Circuit Judges.

Per Curiam

SUMMARY

Criminal Law and Procedure/Juries/Defendants and Accused, Rights of

The court of appeals affirmed a district court judgment of conviction. The court held that the equal protection analysis

*The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. P. 34(a); Ninth Circuit Rule 34-4.

in *Batson v. Kentucky* does not apply to prohibit peremptory strikes based on obesity.

Appellant Luis Santiago-Martinez was charged with drug offenses. The prosecutor struck three venire persons whom defense counsel claimed were obese. Defense counsel himself claimed to be obese. The district court denied defense counsel's challenge. Santiago-Martinez appealed his conviction.

[1] The equal protection analysis in *Batson* does not apply to prohibit peremptory strikes on the basis of obesity. [2] No court has yet held that discrimination on the basis of obesity is subject to "heightened scrutiny" under the Equal Protection Clause.

COUNSEL

Bernardo M. Garcia, Phoenix, Arizona, for the defendant-appellant.

Vincent Q. Kirby, Assistant United States Attorney, Phoenix, Arizona, for the plaintiff-appellee.

OPINION

PER CURIAM:

[1] We hold that the equal protection analysis in *Batson v. Kentucky*, 476 U.S. 79 (1986) does not apply to prohibit peremptory strikes on the basis of obesity.

The defendant in this case was convicted on felony drug charges and now seeks to use the striking of obese venire persons to overturn his conviction. A detailed recitation of the facts is not necessary. It suffices to say that the prosecutor

struck three venire persons whom defendant's counsel claimed were obese. Defense counsel himself claimed to be obese, although he acknowledged that the defendant was not. The district court disagreed with defense counsel's claim of his own obesity, and also stated that it did not regard at least one of the struck venire persons to be obese. The district court denied defense counsel's challenge.

Batson held that the Equal Protection Clause of the Fourteenth Amendment governs the exercise of peremptory challenges by a prosecutor in a criminal trial. *Id.* at 89. *Batson* involved a strike based on race, but the Supreme Court has applied its rationale to forbid strikes based solely on gender as well. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. ___, 114 S.Ct. 1419 (1994). The Court concluded in *J.E.B.* that peremptory strikes based solely on gender cannot survive "heightened scrutiny" under the Equal Protection Clause. *Id.* at 1425-1426. The Court explained that "[p]arties may . . . exercise their peremptory challenges to remove from the venire any group or class of individuals normally subject to 'rational basis' review." *Id.* at 1429.

[2] As the defendant candidly concedes, no court has yet held that discrimination on the basis of obesity is subject to "heightened scrutiny" under the Equal Protection Clause.[1] We are not surprised, and decline to be the first to so hold. The judgment is

AFFIRMED.

[1]Recognition of the class of obese persons for purposes of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., does not subject the class to "heightened scrutiny" under the Equal Protection Clause.

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APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED ___ LODGED
___ RECEIVED ___ COPY
JUN 17 1995
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
DEPUTY

NO. 94-10350
CT/AG#: CR-93-00189-PGR

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LUIS SANTIAGO-MARTINEZ

Defendant - Appellant

APPEAL FROM the United States District Court for the District of Arizona (Phoenix).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Phoenix) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered June 20, 1995.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST

JUL 11 1995

Deputy Clerk

(86)

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States District Court

District of Arizona

FILED
RECEIVED COPY
JUL 28
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE

LUIS SANTIAGO MARTINEZ-SALCIDO, AKA
LUIS SANTIAGO-MARTINEZ
SSN: 547-93-9843

Case Number: CR 93-[illegible]-01 PHX ROA

414 N. SECOND ST.
PATTERSON CA 96536

BERNARDO GARCIA
Attorney for Defendant

THERE WAS A:

[☐ finding ☒ verdict] of guilty as to counts(s) ONE-COUNT INDICTMENT

[☐ finding ☐ verdict] of not guilty as to count(s) _____

☐ judgment of acquittal as to count(s) _____

The defendant is acquitted and discharged as to this/these count(s)

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:

POSSESSION WITH INTENT TO DISTRIBUTE FIVE KILOGRAMS OR MORE OF COCAINE, IN VIOLATION OF TITLE 21, UNITED STATES CODE, SECTIONS 841(a)(1) and (b)(1)(A)(ii)(II)

IT IS THE JUDGMENT OF THIS COURT THAT:

Defendant is committed to the custody of the Federal Bureau of Prisons for a term of 121 months followed by a five-year term of supervised release. Within 72 hours of release from custody, defendant shall report in person to the probation office in the district to which he is released. While on supervised release, defendant shall comply with the standard conditions of supervised release as adopted by this court in General order #201 and shall also comply with the following special conditions: Defendant shall (1) pay a special assessment of $50, due and payable immediately, to the Clerk U.S. District Court and while incarcerated payments to begin through the Inmate Financial Responsibility Program; (2) submit to search of person, property, vehicles, business, and residence to be conducted in a reasonable manner and at a reasonable time by, or at the direction of, the probation officer; (3) participate as instructed by the probation officer in a program of substance abuse treatment which may include testing for substance abuse and contribute to cost of treatment in an amount to be determined by the probation officer; (4) be denied federal benefits pursuant to Title 21, United States Code, Section 862(a)(1).

IT IS FURTHER ORDERED remanding defendant to the custody of the United States Marshal for incarceration.

000013

In addition to any conditions of probation/supervised release imposed above, IT IS ORDERED that the conditions of probation/supervised release set out in the remainder of this judgment are imposed

CONDITIONS OF PROBATION/SUPERVISED RELEASE)

While probation has been ordered the defendant shall:
(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
(2) associate only with law-abiding persons and maintain reasonable hours;
(3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work, notify your probation officer at once and consult him prior to job changes);
(4) not leave the judicial district without the permission of your probation officer;
(5) notify your probation officer immediately of any changes in your place of residence;
(6) follow your probation officer's instructions, report as directed, and comply with any general or special conditions pursuant to District of Arizona General Order 201.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less then the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

IT IS FURTHER ORDERED that the defendant shall immediately pay to the Clerk of the Court a total special assessment of $100.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) I and II of the Indictment as follows:

due immediately and if not immediately paid, that payments be made pursuant to the Inmate Financial Responsibility Program.

IT IS FURTHER ORDERED that counts N/A. are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States Attorney for this district any amount imposed as restitution. The defendant shall pay to the Clerk of the Court any amount imposed as a fine and as a cost of prosecution. Payment of such amount is due immediately but, if so ordered shall be payable in equal monthly installments with payment in full by a date certain. In all cases restitution, fines, and costs shall be payable during the period of incarceration with the payment of any remaining balance to be a condition of probation or supervised release. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the United States Attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this judgment to the United States Marshal of this district.

☐ The Court orders commitment to the custody of the Bureau of Prisons and recommends:

April 15, 1994
Date of Imposition of Sentence

Signature of Judicial Officer

ROBERT C. BROOMFIELD,
UNITED STATES DISTRICT JUDGE
Name and Title of Judicial Officer

April 21, 1994.
Date

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, the institution designated by the Bureau of Prisons, with a certified copy of this Judgment in a Criminal case.

United States Marshal

By _____
Deputy Marshal

ARABIA, GABRIEL CR 93-331-01-PHX-RCB